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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,744	08/28/2001	Christopher Carl Wulforst	5308	5156

7590 05/17/2004

Milliken & Company
P.O. Box 1927
Spartanburg, SC 29304

EXAMINER	
OLSZEWSKI, JOAN M	
ART UNIT	**PAPER NUMBER**
3677	

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/940,744	WULFORST ET AL.	
	Examiner	Art Unit	
	Joan M. Olszewski	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *March 8, 2004 (Appeal Brief)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

NON-FINAL REJECTION

This is in response to Applicant's Appeal Brief filed March 8, 2004. Finality of the Office Action filed October 14, 2003 has been withdrawn. Currently, claims 1-14 are pending in this application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6-11 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. The device as set forth in the above identified claims of copending application 10/207519 sets forth all of the features claimed except for the cushioning core being removable from the outer encasing. Denesuk et al. show a removable outer encasing (12) having an inner filling (14).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims

1,2,17,19,20 and 23-25 of the copending application 10/207519 by utilizing a removable outer encasing with an inner filling inside as taught by Denesuk et al. in order to provide an opportunity to launder the outer encasing and if need be replace the inner cushioning filler or core.

This is a provisional obviousness-type double patenting rejection.

Claim 5 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. and further in view of Ryan et al. (U.S. Patent 5,019,062). The device as set forth by copending application 10/207519 in claims 1,2,17,19,20 and 23-25 as modified in the rejection above teaches everything except for the activated charcoal having about a 100 x 150 particle screened size and distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose in a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (Column 3, lines 48-52) and is applied at about 3 mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device as represented by claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 as modified by Denesuk et al. in the rejection above to include a micron particle size activated charcoal

distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard as taught by Ryan et al. for the purposes of providing the optimum size and distribution of the odor agents to adsorb odor.

Further, although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

This is a provisional obviousness-type double patenting rejection.

Claims 12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,17,19,20 and 23-25 of copending Application No. 10/207519 in view of Denesuk et al. and Sesselmann (U.S. Patent 5,539,930). The combination of the identified claims of Applicant's copending application and Denesuk et al. shows all of the features claimed except for the backing material being formed as a film. However, Sesselmann shows a backing material (32) being formed as a film (column 4, line 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of the identified claims of Applicant's copending application and Denesuk et al. to include a backing material being formed as a film as taught by Sesselmann in order to provide uniform coverage and strength to the material and a waterproofing to protect the inner cushion.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostial (US 2002/0108578) in view of Pearson et al. (US Patent 3,783,085).

Regarding Claims 1-10, 11 and 14, Kostial discloses an animal pad or bed (10) comprising a removable encasing having a top surface (18) and a bottom surface (19), a face textile and an exterior surface and an interior surface [0025] and a cushioning core (28). Kostial does not specify the odor receiving layer permanently disposed on the interior surface of the face textile in a configuration that covers at least the entire top surface of the removable encasing or the cushioning core located adjacent to the odor receiving layer permanently disposed on the interior surface of the face textile. However, Pearson et al. teach an odor receiving layer permanently disposed on the interior surface of a face textile in a configuration that covers at least the entire surface between the face textile and the inner substrate (column 2, lines 20-24).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Kostial to form the odor receiving layer permanently disposed on the interior surface of the face textile with an inner liner below the layer of charcoal as taught by Pearson et al. so as to provide the

device with an improved odor reducing feature. Re- claims 2-4, wherein the odor receiving layer is activated charcoal (Pearson et al.)(column 1, lines 49-51) which would act as both an adsorbing and absorbing agent; re-claim 5, wherein the activated charcoal has a particle screened size of about 100 x 150 (Pearson et al.)(column 3, lines 7-10) since the charcoal size of Pearson et al. is 100-180 microns which is equivalent of a 100-150 screen size; the distribution on the interior surface of the face textile is at a rate of from about 1.5 ounces to about 3 ounces per square yard (Pearson et al.)(column 3,line 10) since the application rate of 40gm/m² is equivalent to 1.2 ounces/sq yd which is "about" 1.5 ounces/sq yd limitation; re-claims 6 and 7, wherein the odor receiving layer includes thermoplastic adhesive or hot melt (Pearson et al.)(column 2, lines 20-24); re-claims 8,9,10 and 11, as discussed above Pearson et al. teach the use of a fabric type backing material (Pearson et al.)(column 2, lines 30-35) with the layers bonded together by hot melt adhesive (Pearson et al.)(column 2, lines 20-24).

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostial as modified by Pearson et al. as applied to claims 1-10, 11 and 14 above, and further in view of Denesuk et al. (US Patent 6,196,156).

Regarding Claims 12 and 13, Kostial as modified by Pearson et al. discloses all the claimed features as discussed in the rejection above except for the backing material comprising a film and wherein the film of the backing material comprises a low density polyester film. However, Denesuk et al. teach~~es~~ the use of a inner plastic liner (18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Kostial as modified by Pearson et al. by utilizing a plastic backing material as taught by Denesuk et al. in order to provide better protection for the cushion. Further, polyester film is a well known type of plastic and to use such considered obvious.

Response to Arguments

With respect to the arguments set forth in the Appeal Brief filed 3/8/04, Applicant has agreed to the filing of a Terminal Disclaimer to overcome the Double Patenting rejections set forth above. Further, the arguments directed to the rejections under 35 USC 103 are deemed moot in view of the new grounds of rejection above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ainsworth et al. (3,586,596), Eian et al. (4,681,801), Jordan (5,226,384), von Blucher et al. (5,350,443), Bachinger (DE 3101277 A1), Nishimura et al. (JP 03103254 A) and Yoshizawa (JP 03126454 A).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Thursday (5:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT ~~333~~ 3643

Joan M. Olszewski
Patent Examiner
Art Unit 3677

JMO